

U.S. Department of Energy

Washington, D.C.

ORDER

DOE 3710.1A

9-30-86

SUBJECT: LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES

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1. PURPOSE. To set forth general policies, responsibilities, and requirements, and outline procedures for administration of the Federal Employee Labor-Management Relations Program under Title 5, United States Code (U.S.C.), chapter 71, and under Executive Order 11491, as amended, where applicable.
 2. CANCELLATION. DOE 3710.1, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 1-16-81.
 3. EXCEPTIONS. The provisions of this Order do not apply to:
 - a. The Office of the Inspector General.
 - b. The Office of the Assistant Secretary for Defense Programs, the Albuquerque, Nevada, and Savannah River Operations Offices and any organization, under 5 U.S.C. 7103(b)(1), having as a primary function intelligence, counterintelligence, investigative, or national security work, so that the provisions of 5 U.S.C., chapter 71, cannot be applied to the organization in a manner consistent with national security requirements and considerations.
 4. REFERENCES.
 - a. Public Law 95-454, the Civil Service Reform Act, Title 7, codified as 5 U.S.C., chapter 71, and 5 U.S.C. 5556(b), which provides the statutory framework for the Federal service labor-management relations program.
 - b. Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service," where applicable, which assigned responsibilities and authorities to the executive branch of the Federal Government prior to the passage of the Civil Service Reform Act. Provisions of Executive Order 11491, as amended, were carried over under 5 U.S.C. 7135.
 - c. Executive Order 12171 of 11-19-78, amended by Executive Order 12338 of 1-11-82, which exempts certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program.
 - d. Title 5, Code-of Federal Regulations (CFR), parts 2400 through 2430, the regulations of the Federal Labor Relations Authority (FLRA), which prescribe the procedural requirements for resolving unfair labor practice

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

complaints, negotiability appeals, and representation issues. The FLRA establishes labor-management relations and is generally responsible for carrying out the purposes of 5 U.S.C., chapter 71.

- e. Title 5, CFR, parts 2470 and 2471, the regulations of the Federal Service Impasses Panel (FSIP), which prescribe the procedural requirements for bringing negotiations impasses before FSIP.
- f. Title 29, CFR, parts 1400 through 1499, the regulations of the Federal Mediation and Conciliation Service (FMCS), which prescribe the procedural requirements for obtaining FRCS assistance in mediating bargaining disputes.
- g. Title 29, CFR, part 1613, the regulations of the Equal Employment Opportunity Commission, which prescribe procedures for processing discrimination complaints.
- h. Federal Personnel Manual (FPM), chapter 711, which contains guidance from the Office of Personnel Management (OPM) on agency labor relations programs.
- i. FPM supplement 296-33, subchapter 4, Figure 4-3, which contains instructions on assigning bargaining unit status codes.
- j. Any applicable approved negotiated agreement with an exclusive representative.

5. RESPONSIBILITIES AND AUTHORITIES.

- a. Director of Administration (MA-2) shall:
 - (1) Monitor the Federal Employee Labor Relations Program within the Department of Energy (DOE) and issue appropriate policies, rules, and regulations.
 - (2) Accord national consultation rights to labor organizations that qualify under 5 U.S.C. 7113 and implementing regulations.
 - (3) Disapprove initial, or withdraw continued, recognition of labor organizations in accordance with 5 CFR, part 2422.
- b. Deputy Director of Administration (MA-2.1) shall act as the collective bargaining official for Headquarters, exercising the authority in paragraph 5d.
- c. Director of Personnel (MA-20) shall:
 - (1) Manage, direct, and exercise overall policy guidance over DOE's labor-management relations program.

- (2) Represent DOE before Federal agencies.
 - (a) In coordination with the General Counsel, act as the primary representative before the FLRA for the following:
 - 1 Requests for major policy decisions or clarifications of present policy, under 5 CFR, Part 2427, "General Statements of Policy or Guidance";
 - 2 Responses to negotiability appeals filed by labor organizations under 5 CFR, Part 2424, "Expedited Review of Negotiability Issues";
 - 3 Exceptions to arbitrators' awards under 5 CFR, Part 2425, "Review of Arbitration Awards";
 - 4 Exceptions to decisions of FLRA regional directors under 5 CFR, Part 2422, "Representation Proceedings," and 5 CFR, Part 2423, "Unfair Labor Practice Proceedings";
 - 5 Exceptions to decisions of FLRA Administrative Law Judges under 5 CFR, Part 2423, "Unfair Labor Practice Proceedings"; and
 - 6 Responses to petitions for consolidation of bargaining units under 5 CFR, Part 2422, "Representation Proceedings."
 - (b) Concur with requests to file unfair labor practice charges with the FLRA against labor organizations under 5 CFR, Part 2423, "Unfair Labor Practice Proceedings."
 - (c) Present questions to the Department of Labor regarding standards of conduct for labor organizations under 5 U.S.C. 7120.
 - (d) Submit requests or information to OPM for the following:
 - 1 petitions for judicial review of arbitrators' awards under 5 U.S.C. 4303 or 5 U.S.C. 7312;
 - 2 Labor-management relations guidance; and
 - 3 Reports on official time and bargaining unit composition.
 - (e) In conjunction with the Office of the Controller, process requests to the Comptroller General of the United States regarding negotiated wages and other pay matters.
- (3) Provide direction on DOE requirements, recommendations, and guidance, as appropriate, to Departmental negotiators.

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- (a) Review initial proposals from exclusive representatives and management.
- (b) Advise negotiators on current FLRA decisions and Departmental policy before the commencement of negotiations.
- (c) Interpret DOE personnel policies; coordinate policy interpretations and requests for exceptions with other DOE organizations during negotiations.
- (4) Review and approve negotiated agreements, renegotiations, supplements, and side agreements for conformance with law, rule, or regulation under 5 U.S.C. 7114(c). This section states that an agreement shall be approved within 30 days if it meets statutory requirements.
- (5) Coordinate with the General Counsel on the legal issues related to all actions referenced in paragraph 5c(2)(a).
- (6) Assure the adequacy of Departmentwide labor-management relations training for management negotiators, labor relations specialists, personnel specialists, and supervisors.
- (7) Communicate with national labor organizations.
 - (a) Act as the sole representative of DOE with national headquarters of labor organizations representing DOE bargaining unit employees.
 - (b) Negotiate multi-unit or national agreements, as appropriate, for units that cross organizational or geographical lines. Engage in impasse procedures under 5 CFR, parts 2470 and 2471, as required.
- d. Heads of Field Organizations or Their Designees shall act as collective bargaining officials for their organizations. They shall:
 - (1) Administer the labor-management relations program within the organizations under their direction in keeping with 5 U.S.C., chapter 71, regulations, decisions of outside authorities, and this Order.
 - (2) Participate in the representation of their organizations before the FLRA, FSIP, FMCS, and arbitrators.
 - (3) Bring to the attention of the Office of Personnel :
 - (a) Any matters relating to the Director of Personnel responsibilities in paragraph 5c(2).

(b) Labor-management relations reports required by this Order, OPM, and other Federal agencies.

- (4) Ensure that employees under their supervision are apprised of their rights under 5 U.S.C. 7114(a)(2)(B) and under appropriate negotiated agreements.
- (5) Keep the Office of Personnel advised of significant problems and the progress of the program through submission of an annual report or oral reports, as required.

e. General Counsel (GC-1) shall:

- (1) Provide legal advice to the Director of Personnel and to field legal staff members on questions concerning the interpretation of laws, rules, or regulations bearing on the labor-management relations program.
- (2) In coordination with Director of Personnel, represent or participate in the preparation for and representation of the DOE at hearings before the FLRA, FSIP, FMCS, or Administrative Law Judges. (See page 3, paragraph 5c(2) (a).)
- (3) Review all requests for payment of attorney's fees for conformance with applicable laws and regulations.

f. Managers and Supervisors shall:

- (1) Represent, express, and support the management viewpoint in the administration of DOE policy and in communication with employees and labor organization representatives.
- (2) Promptly inform the local labor relations or personnel officer of significant problems affecting the labor-management relations program.
- (3) Meet with labor organization representatives as required by statute or appropriate agreements after consultation with the local labor relations or personnel officer.
- (4) Represent DOE at agreement negotiations, as required. Maintain records on costs of management's and the exclusive representative's proposals so that the proposals can be analyzed in terms of their effects on the efficiency of DOE.
- (5) Maintain records on official time used by exclusive representatives under the statute, regulations, or terms of negotiated agreements.

g. Labor Relations and Personnel Officers shall:

- (1) Act as the principal advisors to management on labor relations matters, including representational issues, negotiations, agreement administration, and the impact of appropriate third-party decisions on the local labor-management relations program.
- (2) Ensure that managers and supervisors are properly trained to carry out their labor-management relations responsibilities.
- (3) Maintain statistics on bargaining unit membership, official time, and negotiations, as required by OPM or DOE.

BY ORDER OF THE SECRETARY OF ENERGY:



HARRY L. PEEBLES
Director of Administration

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CHAPTER IGENERAL PROVISIONS

1. MANAGEMENT RESPONSIBILITIES. When dealing with labor organizations acting as exclusive representatives of bargaining unit employees, management must deal with those organizations fairly and in good faith. Management must also be cognizant of its duty to present and fully articulate the position of the Federal Government and the Department and its organizations. When dealing with individual bargaining unit employees, management must ensure that the employees are free to exercise their rights under 5 U.S.C., chapter 71; that is, the right to form, join, or assist any labor organization, or to refrain from any such activity, the right to act for a labor organization in the capacity of a representative, and the right to engage in collective bargaining.
2. MANAGEMENT RIGHTS AND BARGAINING OBLIGATIONS.
 - a. The statute lists those rights which management alone may exercise. (See 5 U.S.C. 7106(a).) Those rights include the right to:
 - (1) Determine the mission, budget, organization, number of employees, and internal security practices; in accordance with laws, to hire, assign, direct, layoff, retain, suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
 - (2) Assign work and make contracting-out determinations; and
 - (3) Select for appointments from among properly ranked and certified candidates or from any other appropriate source.
 - b. When implementing these rights, management may change conditions of employment, that is, personnel policies, practices, and matters affecting working conditions as defined in 5 U.S.C. 7103(a)(14). When management anticipates that it will be making more than minimal changes to conditions of employment (in case law referred to as a de minimis change), management must notify the exclusive representative and afford the representative an opportunity to present proposals on:
 - (1) Procedures management will use when, implementing decisions; and
 - (2) Appropriate arrangements for adversely affected employees.
 - c. The notification of the change should be specific and provide clear, unqualified information about planned management actions including the implementation date. See Chapter III for procedures related to negotiating on proposals. If the exclusive representative fails to respond to management's notification by the implementation date or otherwise indicates that no proposals will be forthcoming, management may proceed to implement.

3. FORMAL DISCUSSIONS.

- a. Section 7114(a)(2)(A) of 5 U.S.C. states management's obligation, when holding a formal discussion, to afford the exclusive representative an opportunity to attend. The exclusive representative has the right to attend a formal discussion between one or more agency representatives and one or more employees or representatives concerning grievances, personnel policy, or other general conditions of employment. The following questions should be used as guidelines for determining management's obligations:

(1) Is the meeting or discussion "formal" in nature?

(2) Is attendance mandatory?

(3) Is there a proposed agenda?

(4) Will attendees include high-level managers?

(5) What is the topic of the meeting?

- b. All of these criteria need not be met to trigger a management obligation; one or more of these factors could outweigh the absence of others.

- c. If the exclusive representative's designee or steward is given notice of a formal discussion because of his or her duties as an employee, then no further notice need be given to the exclusive representative.

- d. During formal discussions, participation rights afforded to the exclusive representative shall be no greater than participation rights afforded to bargaining unit employees.

4. INVESTIGATORY EXAMINATIONS.

- a. If a management official or someone representing DOE management questions a bargaining unit employee under conditions described in 5 U.S.C. 7114(a)(2)(B), that is, the employee reasonably believes that examination may result in disciplinary action against the employee, and the employee requests the presence of a representative, management shall allow a reasonable amount of time to secure a representative. However, investigatory examinations will not be unduly delayed for the sole purpose of obtaining a representative.
- b. Annually, on 10-1, unless otherwise provided for in negotiated agreements, collective bargaining officials will post the announcement in Attachment I-1 to inform employees of their rights under 5 U.S.C. 7114(a)(2)(B). The announcement will be posted for 30 days; if preferred, Attachment I-1 may be posted permanently.

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5. DUES WITHHOLDING.

- a. Under the provisions of 5 U.S.C. 7115, collective bargaining officials shall, upon request of the appropriate labor organization, deduct the organization's dues from the pay of bargaining unit employees who submit a voluntary allotment on Standard Form (SF) 1187, "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues." Procedures for submitting requests for deductions, for withdrawing such requests, and for modifying dues withholding amounts will be negotiated with the labor organization and incorporated in term agreements. (See Chapter III.)
- b. When an employee becomes ineligible for dues withholding because, through a specific personnel action, he or she is no longer in the bargaining unit, the responsible payroll or personnel office will terminate the employee's dues withholding. (See paragraph 7 below.) The SF-50, "Notification of Personnel Action," will include the statement: This action terminates eligibility for labor organization allotment.

6. OFFICIAL TIME.

- a. Although the exclusive representative may negotiate for additional official time associated with administering a labor-management agreement (see Chapter III, "Negotiations and Agreements," and Chapter IV, "Agreement Administration"), representatives of labor organizations have statutory entitlement to official time under the following conditions:
 - (1) Negotiating a collective bargaining (term or mid-term) agreement. The number of employees for whom official time is authorized under the statute shall not exceed those designated by collective bargaining officials to represent the DOE. (See 5 U.S.C. 7131 (a).)
 - (2) Participating in impasse proceedings under 5 U.S. C. 7131 (a) and 5 CFR, parts 2470 and 2471.
 - (3) Participating in proceedings before the FLRA under 5 U.S.C. 7131 (c) and 5 CFR 2429.13. Those proceedings include investigations of unfair labor practice charges, representation hearings, and representation elections (see Chapter II, "Election Issues"). For purposes of this subparagraph only, the DOE will pay the requisite travel expenses and per diem associated with the use of this official time.
- b. The OPM requires agencies to track and record the use of official time by the exclusive representative and others engaged in a variety of representational activities while on duty time. The local labor relations or personnel officer will compile the time in accordance with the requirements of FPM letter 711-161 (see Attachment I-2) and submit the information to the Office of Personnel by 11-1 of each year.

7. CONFLICT OF INTEREST. No employee shall carry on any activities as an officer or representative of a labor organization that will conflict with the proper exercise of, or be incompatible with, his or her official duties or responsibilities. In the event such a conflict or incompatibility arises, the individual concerned shall be given a reasonable opportunity to correct the condition causing such conflict or incompatibility. If the individual does not voluntarily correct the situation, management shall direct reassignment or another personnel action which will end the conflict or incompatibility.
8. BARGAINING UNIT STATUS.
- a. The local labor relations or personnel officer will continually monitor the composition of his or her respective bargaining units to ensure that the employees in the unit meet the statutory criteria for inclusion. See 5 U.S.C. 7103(a) (2) and 7112(b). If an employee or group of employees becomes ineligible for bargaining unit status, the servicing personnel officer will notify the labor relations officer and the affected employee(s) and will terminate any dues allotments.
 - b. Each encumbered position in the DOE has been assigned a bargaining unit status code. The codes, which are maintained in the DOE payroll/personnel system, indicate whether the employee in the position is:
 - (1) Not eligible for representation by an exclusive representative because the employee is covered by the provisions of 5 U.S.C. 7103(a)(2) or 7112(b) (code 8888);
 - (2) Eligible for representation but unrepresented (code 7777); or
 - (3) Represented by an exclusive representative. The code assigned may be a combination of letters and numbers which cues system users to the composition of the bargaining unit.
 - c. Local labor relations officials or personnel officers will monitor the assignment of bargaining unit status codes within their areas of responsibility. They will forward bargaining unit status code information to the Director of Personnel when required for reports to OPM.
9. LABOR-MANAGEMENT RELATIONS REPORTS. Collective bargaining officials shall submit a Labor-Management Relations Report to the* Office of Personnel by 11-1 of each year. Negative reports are required. See the reporting requirements in Attachment I-3. The Office of Personnel will compile a DOE summary.

10. UNFAIR LABOR PRACTICE CHARGES.

- a. Regardless of the care with which the local labor-management relations program has been conducted, there may be occasions when labor organizations file unfair labor practice charges against DOE organizations. The local labor relations or personnel officer shall ascertain the facts surrounding the charge as soon as the charge is received. All parties shall cooperate with FLRA investigators; they shall allow bargaining unit employees official time to participate in the investigation if requested by the FLRA. Managers and supervisors are entitled to representation when being interviewed by FLRA investigators. They shall not sign any statement summarizing these interviews with FLRA investigators without the approval of their representatives and without being certain that DOE views have been presented accurately. The FLRA will not penalize anyone for refusing to sign statements.
- b. When collective bargaining officials believe that the exclusive representative has committed a violation of the statute, they will request approval to file an unfair labor practice charge against the exclusive representative. The Director of Personnel must concur with all such requests. Requests for approval will include a sample copy of FLRA 23, "Charges Against Labor Organization or Its Agents," and a full description of the event(s) leading to the recommended unfair labor practice charge.

NOTICE TO BARGAINING UNIT EMPLOYEES

Title 5, U.S.C., chapter 71, gives employees in a bargaining unit represented by an exclusive representative the right, under limited circumstances, to have a representative present at a meeting involving an examination by a representative of management in connection with an investigation. Title 5, U.S.C. 7114(a)(2)(B) states:

"(a)(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at

* * * * *

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation."

Therefore, as also required by 5 U.S.C. 7114(a)(3), You are hereby given notice of the right set forth in this provision.

OFFICIAL TIME USED BY EXCLUSIVE REPRESENTATIVES AND PERSONAL REPRESENTATIVES

<u>Type of Activity</u>	<u>Number of Hours</u>	<u>Travel and Per Diem Costs</u>
1. <u>Labor Relations Activities</u>		
a. Negotiating a basic agreement.		N/A
b. Negotiating mid-term agreements.		N/A
c. Resolving impasses before the Federal Service Impasses Panel.		N/A
d. Consulting with management (including committee meetings, formal meetings and investi- gatory interviews).		
e. Grievances - Union or Management.		
f. Arbitration - Union or Management.		
g. Grievances - Employee.		
(1) Representing grievant.		
(2) Being represented.		
h. Arbitration - Employee.		
(1) Representing grievant.		
(2) Being represented.		
i. Representing an employee or a union or serving as a witness during the investigation or hearing of cases before the Federal Labor Relations Authority.		
j. Representing a labor organization during an inspection conducted by the Occupational Safety and Health Administration.		

<u>Type of Activity</u>	<u>Number of Hours</u>	<u>Travel and Per Diem Costs</u>
k. Receiving training as a steward or other union representative to the extent that a labor agreement allows such use of official time.		
2. <u>Processing Grievances Under the Agency Grievance Procedure</u>		
a. Representing grievants.		
b. Being represented.		
3. <u>Statutory Appeals, Except for Equal Employment Opportunity Complaints: (Please list each appeal separately and specify the type of appeal.)</u>		
a. Representing grievants.		
b. Being represented.		
4. <u>Equal Employment Opportunity Complaints</u>		
a. Representing complainants.		
b. Being represented.		
c. Serving as witness called by the employee.		
(1) In a case before a complaints examiner.		
(2) In a case before the Equal Employment Opportunity Commission.		

STATISTICAL SUMMARY OF LABOR-MANAGEMENT RELATIONS ACTIVITIES

Organization: NE Power AdministrationPeriod Ending: September 19 87

1. Labor Organizations with Exclusive Recognition	Date Recognized	Employees in Unit				Unit Description	Initial Agreement Date	Current Agreement Expiration Date
		Total	WG	Other Prof	GS			
ABC Union	6/30/80	400	100			Const. Wkrs.	9/30/80	9/30/87
XYZ Union	10/15/76	200		50	150	Office Prof.	1/1/77	2/15/87

2. (a) Major Labor-Management Relations Problems	For the Year.	None
(b) Prognosis of Labor-Management Relations for the Coming Year.		(See Attached)
(c) Recommendations for Changes in Labor-Management Policy.		(See Attached)

3. Summary of Costs	Amount of Time	Per Diem	Total Cost
(a) Negotiations	100	\$1,000	\$3,000
(b) Consultations	10		200
(c) Dispute Resolution	50	250	1,250
(d) Union Representation			
(1) Meetings with Management	50		500
(2) Grievance/Arbitration	0	250	450
(3) Other (specify)			

CHAPTER II

ELECTIONS

1. ORGANIZING ACTIVITIES. Title 5, U.S.C., section 7102 guarantees an employee's right to form a labor organization which, presumably, could become the exclusive representative of bargaining unit employees. Management may not interfere with that right. However, employee efforts to form a labor organization do not convey any further rights until a sufficient showing of interest in labor organization representation has been submitted to the FLRA. (See paragraph 2 below.) Therefore, requests for, information on potential bargaining unit members will not be treated like requests submitted under 5 U.S.C. 7114(b)(4) but, rather, like requests from the public. Requests for access to Government facilities will be treated similarly. Activities such as literature distribution or informational picketing conducted outside Government facilities will be allowed if such activities conform to local law; however, no organizing activities will be allowed to disrupt agency mission or Federal employees' duties.
2. REPRESENTATION PETITION.
 - a. Title 5 of CFR, part 2422, describes procedural requirements for the representation election process. The formal process begins when a labor organization, seeking to become the exclusive representative of an agency's bargaining unit employees, files a representation petition with the FLRA. The local labor relations or personnel officer will examine the petition, which must, by regulation, be served on the agency, to ascertain:
 - (1) Timeliness. A representation petition cannot be considered timely if there has been an election in the bargaining unit within the last 12 months in which no labor organization was certified by the FLRA as the exclusive representative or if a labor organization has been certified within the last 12 months but has no written term agreement with the agency. Finally, if there is a term agreement effective for 3 years or less between the exclusive representative and management, a representation petition may be timely filed only during a window period (60-105 days) before or at any time after the expiration of the agreement. (See 5 CFR 2422.3.)
 - (2) A Sufficient Showing of Interest. The representation petition filed with the FLRA must be accompanied by a list of signatures of employees who have expressed interest in an election; the list must consist of at least 30 percent of the bargaining unit. Under FLRA regulations, management will not be given access to the list of signatures. Therefore, if the local labor relations or personnel officer believes that there is not a sufficient showing of interest, an independent investigation should be conducted. Due to the sensitivity of such an investigation, the Director of Personnel should be consulted before beginning. (See 5 CFR 2422.2.)

(3) Appropriateness of the Bargaining Unit. The bargaining unit described in the representation petition must ensure a clear and identifiable community of interest among bargaining unit employees, and it must promote effective dealings between the exclusive representative and management and the efficiency of agency operations. Further, the unit described in the petition must reflect all statutory exclusions under 5 U.S.C. 7112; that is, managers, supervisors, confidential employees, personnelists, and employees engaged in labor relations, investigative, or natural security work must be excluded. The local labor relations or personnel officer should begin immediately to assemble appropriate documentation reflecting improper configuration of or inclusions in the bargaining unit.

b. After receipt of the representation petition, the FLRA will post a notice of proposed election at work site(s). If the petition is deficient in any element listed above, response shall be filed with the FLRA, challenging the validity of the petition, within 10 days of the posting of the proposed election notice. A copy of the response shall be forwarded to the Office of Personnel.

3. EQUAL ACCESS.

a. A labor organization challenging an incumbent exclusive representative pursuant to a validly filed election petition, as determined by the FLRA, is entitled to be accorded a status equivalent to the exclusive representative's for matters related to the determination of the exclusive representative. These matters differ from those which have been bargained for or which would accrue to the exclusive representative under 5 U.S.C., chapter 71, such as the right to attend formal meetings. Equivalent status will remain in effect until final disposition of the representation process, including any challenges to the representation election and resolution of those challenges.

b. As soon as the FLRA has accorded a challenging labor organization equivalent status, the local labor relations or personnel officer will notify each organization, in writing, of the specific DOE services or facilities each organization may use during the representation campaign. These services or facilities may include:

- (1) Use of a public area for distributing literature during non-duty time; and
- (2) Use of employee bulletin boards (rather than use of management bulletin boards previously negotiated by the exclusive representative).

4. MAINTAINING CONDITIONS OF EMPLOYMENT. The FLRA has ruled that employers must maintain, to the maximum extent possible, conditions of employment during a representational campaign. This rule preserves the equivalent status of the challenging labor organization with that of the exclusive representative, which would bargain with management on changes in conditions of employment. Changes involving management rights under 5 U.S.C. 7106(a) or (b)(1), which, respectively, management cannot or need not negotiate, are allowed. However, to preserve the equivalent status of the two competing organizations, management shall change conditions of employment as little as possible during a representational campaign and during any subsequent challenges to election results.
5. MANAGEMENT NEUTRALITY.
 - a. DOE managers and supervisors may, under ordinary circumstances, express personal views about labor organizations or collective bargaining if such expressions are not made under conditions that are coercive to the employee. However, they must remain neutral during representation campaigns. In addition, DOE managers and supervisors may:
 - (1) Publicize an election and encourage bargaining unit employees to vote;
 - (2) Correct the record regarding any false or misleading statement made by any person; or
 - (3) Inform employees of the Federal Government policy regarding labor-management relations.
 - b. Before any representation election campaign begins, the local labor relations or personnel officer will notify local managers of their rights and obligations during the campaign.

CHAPTER III

NEGOTIATIONS AND AGREEMENTS

1. COLLECTIVE BARGAINING AGREEMENTS. When a labor organization has been accorded exclusive recognition, management and the labor organization may negotiate, and reduce to writing if requested, agreements on conditions of employment of bargaining unit employees. The agreements may be basic or term agreements, covering general procedures or continuing practices, or the agreements may be limited ones, negotiated in response to a change in conditions of employment initiated by management. Regardless of the nature of the agreement, the same limitations and review procedures will apply; preparations, described in paragraph 2, below, will be similar.
2. PLANNING FOR NEGOTIATIONS. Effective collective bargaining requires prior planning. As soon as management decides to initiate negotiations or learns that the exclusive representative wishes to negotiate, it should proceed with the following preparations:
 - a. Establishing Bargaining Parameters. Management at all affected levels should thoroughly discuss its needs, the exclusive representative's actual or anticipated proposals, the appropriate means of protecting management's rights, and the organization's mission. As soon as bargaining is initiated by either party, or earlier if negotiations are likely, the local labor relations or personnel officer will contact the Office of Personnel and discuss Departmentwide policies that may affect bargaining.
 - b. Assembling the Bargaining Team. Representatives of line and staff management should be on the bargaining team. All members of the team should receive training, or have experience, in labor-management negotiations. In order to have technical advice readily available during negotiations, a person qualified in personnel management and labor relations policies and procedures shall be a member or technical advisor of all management negotiating teams. Participation in negotiations can be a full-time job. Officials responsible for naming bargaining team members shall ensure that the team members can be spared from their regular duties.
 - c. Keeping Records.
 - (1) The local labor relations or personnel officer shall establish a procedure for establishing the costs of all proposals exchanged during negotiations. This will assist negotiators in assessing the relative worth of various proposals and in preparing a case if impasse procedures are required. The salary costs of time spent by management and exclusive representatives during bargaining shall also be recorded.

- (2) Title 5, U.S.C. 7131 (a) entitles the exclusive representative to official time for negotiating collective bargaining agreements and for participating in impasse proceedings. The local labor relations or personnel officer shall request a list of bargaining team members from the exclusive representative in sufficient time to notify the bargaining team members' supervisors. Further, a record of all official time spent by exclusive representative bargaining team members shall be maintained in accordance with FPM letter 711-161.
- (3) The local labor relations or personnel officer shall establish a procedure for taking notes during bargaining and for maintaining a bargaining history. Information gathered through this process will be valuable during impasse procedures, if required, and during agreement administration.

3. ACCESS TO INFORMATION.

- a. Exclusive Representative's Right to Information. Labor organizations that are exclusive representatives for bargaining unit employees have a special right to information pursuant to 5 U.S.C. 7114(b)(4). Requests for information associated with bargaining proposals or the negotiated grievance procedure will be reviewed by the local labor relations or personnel officer for statutory conformance. If the request for information cannot be honored, he or she will contact the exclusive representative immediately and respond in writing, if necessary.
- b. Limiting Access. Although 5 U.S.C. 7114(b)(4) allows the exclusive representative access to information pursuant to its collective bargaining activities, specifically excluded from this provision is intra-management guidance, advice, counsel, or training related to collective bargaining. Accordingly, pre-bargaining planning or training material will display the following wording: "This document constitutes intra-management communications covering subjects directly related to collective bargaining. Under terms of 5 U.S.C. 7114(b)(4), its contents must not be disclosed to bargaining unit employees or their representatives."

4. SCOPE OF NEGOTIATIONS. Title 5, U.S.C. 7117 requires the agency and the exclusive representative to bargain in good faith with respect to personnel policies, practices, and matters affecting working conditions of bargaining unit employees. However, the statute does not require reaching agreement. The following conditions apply to this requirement.

a. Subjects Prohibited from Negotiations.

- (1) Management Rights. These rights are reserved solely for management under 5 U.S.C. 7106(a). (See Chapter I, paragraph 2a.) The language of 5 U.S.C. 7106(a) shall be incorporated in all term agreements; this will serve as notification to all parties of management's statutory rights.

- (2) Laws. No provision which is inconsistent with any law shall be negotiated. If the provisions of a law convey a right, the statutory language may be included in an agreement as a restatement of a legal requirement. Laws passed during the term of an agreement supersede any portion of an agreement in conflict with the law.
 - (3) Governmentwide Regulations. These have the same effect as laws. Examples of Governmentwide regulations include title 5 CFR; the Federal Personnel Manual; Comptroller General Decisions; Office of Management and Budget Regulations and Circulars; and General Services Administration Regulations. Unless otherwise negotiated, if these regulations are issued during the term of an agreement, the agreement will govern; at the expiration of the agreement, all new regulations will apply and subsequent agreements will be brought into conformance with them.
 - (4) Non-Discretionary DOE Orders. This category includes provisions of published DOE orders that afford local management no discretion. (See paragraph 3c below.)
 - (5) Executive Orders.
- b. Subjects Negotiated at the Election of the Agency. Title 5, U.S.C. 7106(b)(1) allows the agency, at its election, to negotiate on the numbers, types, and grades of employees assigned to a unit, project, or tour of duty, and on the technology, methods, and means of performing work. These are permissive as opposed to Prohibited or mandatory topics. Other topics considered permissive are those that are not strictly conditions of employment of bargaining unit employees, yet not prohibited, and may be negotiated for the sake of clarity in workplace procedures or because they are of great interest to bargaining unit employees. Collective bargaining officials shall obtain advance approval from the DOE office of primary interest prior to negotiating on any permissive subject. The collective bargaining officials shall forward requests to the Office of Personnel, which will obtain approvals from the appropriate offices. However, management should carefully weigh its options before negotiating on permissive subjects. Management should not negotiate on permissive subjects unless the benefits to efficiency of operations far outweigh any resulting limitation on management flexibility.
 - c. Exceptions to DOE Policies and Regulations. When exclusive representatives' proposals appear to conflict with published Departmentwide policies and regulations, collective bargaining officials must obtain an exception to the policies or regulations or declare the proposals nonnegotiable based on compelling need. The FLRA has authority to determine whether a compelling need for Departmentwide regulations exists. (See 5 U.S.C. 7105(a)(2)(D) and 7117(b).) The FLRA's regulations in 5 CFR 2424.11 establish the criteria for compelling need: the policies

or regulations are essential to the agency's mission; they are necessary for the maintenance of merit principles; or they implement, in a nondiscretionary manner, a mandate under law or other outside authority. If management's negotiators anticipate the need for exceptions to DOE's policies or regulations, they shall forward a request for exceptions to the Office of Personnel. The Office of Personnel will coordinate the request with the DOE organization responsible for issuing the policies or regulations. The request must specify the policies or regulations in question and must compare the policies or regulations with the compelling need criteria in 5 CFR 2424.11.

- d. Management Proposals. Management proposals for term agreements shall contain mandatory provisions listed in Attachment III-1. (See paragraph 5, below.)

5. DISPUTE RESOLUTION.

- a. Impasses. If management's negotiators and the exclusive representative are unable to reach agreement during negotiations, the procedures outlined in the regulations of the FMCS, 29 CFR, parts 1404 and 1425, and the regulations of the FSIP, 5 CFR, parts 2470 and 2471, will be followed. Procedures for impasse resolution should be included in the ground rules for negotiating term agreements; term agreements should include provisions for dealing with impasse resolution during mid-term negotiations.
- b. Negotiability Disputes. Guidelines for determining the negotiability of an exclusive representative's proposals are in 5 U.S.C. 7106(a), 7117(a) and (b), 5 CFR 2424.11 (describing compelling need), and applicable case law. If requested by the exclusive representative, local management will provide to the exclusive representative a written statement alleging the nonnegotiability of the exclusive representative's proposals. A copy of the allegation will be sent to the Office of Personnel. If the exclusive representative files a petition for a review of negotiability issues with the FLRA under 5 CFR, part 2424, upon receipt of FLRA's acknowledgement of the petition or upon receipt of a copy of the petition, the local labor relations or personnel officer will notify the Office of Personnel immediately. The Office of Personnel, on behalf of local management, will respond to petitions for review of negotiability issues.

6. REVIEW AND APPROVAL. The Director of Personnel shall review and approve or disapprove negotiated agreements, renegotiations, supplements, and side agreements for conformance with law, rule, or regulation under 5 U.S.C. 7114(c). An agreement shall be approved within 30 days if the agreement meets statutory requirements. The following procedures will be used:

- a. Submitting Agreements. Three copies of each negotiated agreement shall be submitted to the Director of Personnel for review and approval within 5 days of signing. An advance copy should be submitted to the Office of Personnel to permit the review to proceed expeditiously.

- b. Form of Review. Both the submitting organizations and the Director of Personnel will use the review checklist in Attachment III-1 in the review process.
- c. Approval. A negotiated agreement that meets the requirements in 5 U.S.C. 7114 (c)(1), that is, the agreement is not in violation of any laws or governmentwide regulations, will be approved within 30 days of the date of its execution. Upon approval, the Director of Personnel will return two signed copies to the local labor relations or personnel officer as notification of approval; the local labor relations or personnel officer will give one copy to the exclusive representative.
- d. Disapproval. A negotiated agreement that, in whole or in part, does not meet the requirements outlined in 5 U.S.C. 7114 (c) (1) will be returned within 30 days of the date of execution with written identification of the part(s) disapproved and reasons for disapproval. The local labor relations or personnel officer will notify the exclusive representative of the disapproval immediately upon receipt. If, because of workload emergencies, the 30-day approval time may expire before the collective bargaining officials can be notified in writing, the Director of Personnel will notify the local labor relations or personnel officer orally and will contact the exclusive representative directly, if necessary.

AGREEMENT REVIEW CHECKLIST

1. Agreement Between: NE Power Administration/ABC Union
2. Date Received: 9/30/80
3. Mandatory Provisions: _____
- Does agreement contain a:
- a. Statement identifying parties and a statement that the agreement only applies to employees and positions in the bargaining unit? yes
- b. Description of the specific unit to which the agreement applies?
Construction Workers/ Other Blue Collar
- c. Statement incorporating provisions of following sections of 5 U.S.C., chapter 71:
- (1) 5 U.S.C. 7102 Yes
5 U.S.C. 7106(b) Yes
- (2) The language of 5 U.S.C. 7106(a). Yes
- d. Statement specifying the effective date and duration of the agreement? 9/30/80 - 9/30/83
- e. Grievance procedure meeting the following requirements?
- (1) Is fair and simple. Yes
- (2) Contains a clear statement of scope. Yes - Includes management grievances against union
- (3) Provides for expeditious processing. Yes
- (4) Specifically lists those issues which are excluded by law from negotiated grievance procedures. Yes - No EEO grievances
- (5) Provides that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to arbitration. Yes - Panel to be chosen
- (6) Provides that an exclusive representative has a right in its own behalf or on behalf of any employee in the unit to present and process grievances. Yes

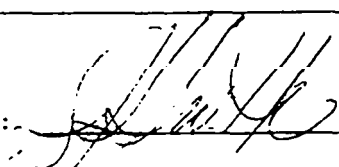
- (7) States that it is the only procedure available to parties and employees for resolving covered grievances. (Note: Actions covered by 5 U.S.C. 7121(d) and (e), if not excluded, may be taken either through the grievance procedures or the statutory appeals procedure.) 7121 Items not excluded
- (8) Contains the employee's right to present a grievance and the right of the exclusive representative to be present.
Yes
- (9) Statement that management or the exclusive representative are the only parties who may invoke arbitration.
Yes
- (10) A statement that the parties have the right to file exceptions with the FLRA to the arbitration award for other than chapter 43 or 75 actions. Yes
- (11) Contains procedures for dealing with grievability on arbitrability during initial stages. Yes - But carried forward if in dispute
- f. Dues withholding procedure incorporating the following provisions:
- (1) That the provisions are subject to and will be governed by 5 U.S.C. 7115. Yes
- (2) That the filing of the SF-167, "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Dues," shall be a voluntary action by the employee.
Yes
- (3) A requirement for prompt notification to the employer by the labor organization of an employee's notification of revocation of the allotment or ineligibility to continue an allotment.
Yes
- (4) The title and address of the labor organization official who is to receive the remittance and the remittance listing.
- (5) The information to be provided in the remittance listing.
- (6) The frequency with which the labor organization may change the amount of the dues to be deducted for each allotter.
One change per year

- (7) The procedures for adjustment of errors in the amount of the remittance Yes.
- (8) The effective dates for the beginning and cancellation of allotments 3 Payperiods after receipt
- (9) Procedures for removing allottees who are no longer eligible for dues allotments. Yes
4. Has advance approval been obtained from the Office of Personnel on any negotiations concerning section 7106(b)(1) of the act?
Yes - Re: Technology Issues
5. Changes in agreement requiring correction: _____

6. Suggested changes: _____

7. Name of Headquarters representative with whom discussed:
Joe Jones

8. Date oral or written review approval or nonapproval given:
10/15/80

Signature: 

REMARKS:

9-30-86

CHAPTER IVAGREEMENT ADMINISTRATION

1. SUPERVISORS' TRAINING. The success of a labor-management agreement depends largely on how the agreement is administered. Consistent and knowledgeable interpretation of the agreement will lessen confusion and the possibility of dissatisfaction and grievance. Accordingly, within 60 days of the approval of a negotiated agreement between local management and the exclusive representative, all affected managers and supervisors will receive training on the agreement. The training will cover such topics as new agreement provisions, management's interpretation of the provisions, implementation procedures, employee rights, and responding to employee grievances. Members of management's bargaining team will participate in the training, as appropriate. The training shall be confined to non-bargaining unit employees.
2. GRIEVANCES AND ARBITRATIONS.
 - a. Each supervisor will contact his or her local labor relations or personnel officer as soon as he or she receives a grievance. The grievance will be examined for procedural conformance with 5 U.S.C. 7121 and the negotiated agreement. The local labor relations or personnel officer will assist managers and supervisors with appropriate responses at each step of the grievance procedure, if necessary.
 - b. Each grievance will also be examined for issues of grievability or arbitrability. If a grievance raises a question of arbitrability (that is, it raises an issue on request for relief that, if granted, would conflict with law, rule, or regulation), the local labor relations or personnel officer will contact the Office of Personnel for advice and assistance in formulating a response. Although the issue of arbitrability is to be decided by the arbitrator under 5 U.S.C 7121(a)(1), it is not an unfair labor practice to refuse to process a grievance if the issue is clearly outside the authority of the arbitrator to adjudicate.
 - c. The exclusive representative has the right to information in order to pursue a grievance. (See 5 U.S. C. 7114((b)(4).) Chapter III, paragraph 3a, describes the procedure for responding to such requests.
 - d. If an arbitrator issues an award that local management believes is contrary to law or regulation, the local labor relations or personnel officer shall notify the Office of Personnel immediately and forward the appropriate documentation within 5 days of receipt of the award. The Office of Personnel, on behalf of local management, will file exceptions to arbitrators' awards with the FLRA under 5 CFR, part 2425. The FLRA is not authorized to review arbitrators' awards related to performance-based removals or demotions under 5 U.S.C. 4303 or adverse actions under

5 U.S.C. 7512. Only OPM may seek review of such awards from the U.S. Court of Appeals for the Federal Circuit. The Office of Personnel, on behalf of local management, will file requests with the OPM to seek judicial review of these types of arbitration awards.

3. ATTORNEY FEES. If an exclusive representative requests attorney fees in conjunction with an arbitration, the request and proposed response will be forwarded immediately to the Office of Personnel, which will direct the request to the Office of General Counsel for statutory and regulatory review. The General Counsel will concur in all responses to, requests for attorney fees. An award of attorney fees that is not in conformance with 5 U.S.C. 5596(b) or 5 U.S.C. 7701(g) will be a basis for DOE's filing exceptions to the award with the FLRA or for requesting judicial review by the OPM.
4. PICKETING OR DEMONSTRATIONS BY LABOR ORGANIZATIONS. Title 5, U.S.C. 7102 states the rights of employees to form, join, or assist labor organizations or to refrain from doing so. Further, 5 U.S.C. 7116(b) allows informational picketing that does not interfere with agency operations. Local management is expected to protect those rights. However, informational picketing or demonstrations by labor organizations, which may arise as a result of what is perceived to be an inadequately resolved grievance or complaint, are still subject to potential misunderstanding by the public. Accordingly, the local labor relations or personnel officer will notify the Office of Personnel immediately of such picketing or public demonstrations. The information will include the location, organizational element, subject of the picketing or demonstration, and other pertinent facts.

CHAPTER V

LABOR MANAGEMENT RELATIONS AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

1. CHOICE OF PROCEDURES.

- a. Pursuant to 5 U.S.C. 7121(d), the negotiated grievance procedure may extend to allegations of discrimination. However, employees must choose either the statutory discrimination complaint procedure (see 5 U.S.C. 2302(b)(1) and 29 CFR, Part 1613) or the negotiated grievance procedure but not both. As soon as an employee files a formal, written complaint or grievance, he or she will be considered to have made a choice. Meeting with a counselor to discuss a possible grievance or complaint would not constitute a choice.
- b. Title 5 U.S.C. 7121(b)(3)(C) sets forth the right of the exclusive representative or the agency to invoke arbitration. When an allegation of discrimination is raised during the negotiated grievance procedure, the grievant has a right of appeal to the Equal Employment Opportunity (EEO) Commission either after arbitration or, if arbitration has not been invoked, at the end of the grievance procedure. See 29 CFR 1613.231 (b).
- c. When an employee chooses the statutory discrimination complaint procedure, the employee may then choose his or her own personal representative. If the employee chooses a labor organization official as a personal representative, the representative's time will not count as official time for grievance purposes. (See Chapter 1.) The choice of the employee's representative is also subject to disapproval under the appropriate regulations.
- d. If the employee chooses the statutory discrimination complaint procedure, any meetings held between employee and management about the complaint are not formal meetings as defined by 5 U.S.C. 7114(a)(2)(A), and management may properly forbid the exclusive representative's attendance.

2. IMPLEMENTING A DISCRIMINATION COMPLAINT DECISION.

- a. Corrective or remedial actions ordered by the Merit Systems Protection Board (MSPB) or a DOE EEO officer are binding on the DOE. If application and implementation of a decision concerning a complaint of discrimination will have an impact on personnel policies, practices, or working conditions, management must notify the exclusive representative and afford the representative a reasonable opportunity to make appropriate proposals prior to the implementation of such changes.

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- b. If the remedial action ordered by the MSPB or the EEO officer includes meeting with an employee or employees regarding personnel policies, practices, or matters affecting working conditions, management will notify the exclusive representative and offer the representative an opportunity to attend the meeting.
3. AFFIRMATIVE ACTION PLANS. DOE management is required to maintain an affirmative action program to ensure equal employment opportunity. If the development of affirmative action plans involves changes in personnel policies, practices, or working conditions, management will notify the exclusive representative of the proposed changes and will afford the exclusive representative an opportunity to submit appropriate proposals regarding the plans prior to implementation.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3710.1A Chg 1
5-18-92

SUBJECT: LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL WORKERS

1. PURPOSE. To transmit revised pages to DOE 3710.1A, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 9-30-86.
2. EXPLANATION OF CHANGE. To reflect only organizational title and routing symbol editorial changes required by Notices in the SEN-6 series. No substantive changes have been made.
3. FILING INSTRUCTIONS.
 - a.

<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
1 thru 4	9-30-86	1 thru 4	5-18-92
 - b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.
Acting Director
Administration and Human
Resource Management

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Personnel

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3710.1A

9-30-86

Change 1: 5-18-92

SUBJECT: LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL
EMPLOYEES

1. PURPOSE. To set forth general policies, responsibilities, and requirements, and outline procedures for administration of the Federal Employee Labor-Management Relations Program under Title 5, United States Code (U.S.C.), chapter 71, and under Executive Order 11491, as amended, where applicable.
2. CANCELLATION. DOE 3710.1, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 1-16-81.
3. EXCEPTIONS. The provisions of this Order do not apply to:
 - a. The Office of the Inspector General.
 - b. The Office of the Assistant Secretary for Defense Programs, the DOE Albuquerque, Nevada, and Savannah River Field Offices, and any organization, under 5 U.S.C. 7103(b)(1), having as a primary function intelligence, counterintelligence, investigative, or national security work, so that the provisions of 5 U.S.C., chapter 71, cannot be applied to the organization in a manner consistent with national security requirements and considerations.
4. REFERENCES.
 - a. Public Law 95-454, the Civil **Service** Reform Act, Title 7, codified as 5 U.S.C., chapter 71, and 5 U.S.C. 5596(b), which provides the statutory framework for the Federal service labor-management relations program.
 - b. Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service," where applicable, which assigned responsibilities and authorities to the executive branch of the Federal Government prior to the passage of the Civil Service Reform Act. Provisions of Executive Order 11491, as amended, were carried over under 5 U.S.C. 7135.
 - c. Executive Order 12171 of 11-19-78, amended by Executive Order 12338 of 1-11-82, which exempts certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program.
 - d. Title 5, Code of Federal Regulations (CFR), **parts 2400** through 2430, the regulations of the Federal Labor Relations Authority (FLRA), which prescribe the procedural requirements for resolving unfair

Vertical line denotes change.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

labor practice complaints, negotiability appeals, and representation issues. The FLRA establishes labor-management relations and is generally responsible for carrying out the purposes of 5 U. S. C., chapter 71.

- e. Title 5, CFR, parts 2470 and 2471, the regulations of the Federal Service Impasses Panel (FSIP), which prescribe the procedural requirements for bringing negotiations impasses before FSIP.
- f. Title 29, CFR, parts 1400 through 1499, the regulations of the Federal Mediation and Conciliation Service (FMCS), which prescribe the procedural requirements for obtaining FMCS assistance in mediating bargaining disputes.
- g. Title 29, CFR, part 1613, the regulations of the Equal Employment Opportunity Commission, which prescribe procedures for processing discrimination complaints.
- h. Federal Personnel Manual (FPM), chapter 711, which contains guidance from the Office of Personnel Management (OPM) on agency labor relations programs.
- i. FPM supplement 296-33, subchapter 4, Figure 4-3, which contains instructions on assigning bargaining unit status codes.
- j. Any applicable approved negotiated agreement with an exclusive representative.

5. RESPONSIBILITIES AND AUTHORITIES.

- a. Director of Administration and Human Resource Management (AD-1) shall:
 - (1) Monitor the Federal Employee Labor Relations Program within the Department of Energy (DOE) and issue appropriate policies, rules, and regulations.
 - (2) Accord national consultation rights to labor organizations that qualify under 5 U.S.C. 7113 and implementing regulations.
 - (3) Disapprove initial or withdraw continued, recognition of labor organizations in accordance with 5 CFR, part 2422.
- b. Principal Deputy Director of Administration and Human Resource Management shall act as the collective bargaining official for Headquarters, exercising the authority in paragraph 5d.
- c. Director of Personnel shall:
 - (1) Manage, direct, and exercise overall policy guidance over DOE's labor-management relations program.

(2) Represent DOE before Federal agencies.

(a) In coordination with the General Counsel act as primary representative before the FLRA for the following:

- 1** Requests for major policy decisions or clarifications of present policy, under 5 CFR, Part 2427, "General Statements of Policy or Guidance";
- 2** Responses to negotiability appeals filed by labor organizations under 5 CFR, Part 2424, 'Expedited Review of Negotiability Issues';
- 3** Exceptions to arbitrators' awards under 5 CFR, Part 2425, "Review of Arbitration Awards";
- 4** Exceptions to decisions of FLRA regional directors under 5 CFR, Part 2422, "Representation Proceedings," and 5 CFR, Part 2423, 'Unfair Labor Practice Proceedings';
- 5** Exceptions to decisions of FLRA Administrative Law Judges under 5 CFR, Part 2423, 'Unfair Labor Practice Proceedings'; and
- 6** Responses to petitions for consolidation of bargaining units under 5 CFR, Part 2422, 'Representation Proceedings. "

(b) Concur with requests to file unfair labor practice charges with the FLRA against labor organizations under 5 CFR, Part 2423, "Unfair Labor Practice Proceedings. "

(c) Present questions to the Department of Labor regarding standards of conduct for labor organizations under 5 U.S. C. 7120.

(d) Submit requests or information to OPM for the following:

- 1 Petitions for judicial review of arbitrators' awards under 5 U.S.C. 4303 or 5 U.S.C. 7312;
- 2 Labor-management relations guidance; and
- 3 Reports on official time and bargaining unit composition.

(e) In conjunction with the Office of Chief Financial Officer, process requests to the Comptroller General of the United States regarding negotiated wages and other pay matters.

(3) Provide direction on DOE requirements, recommendations, and guidance, as appropriate, to Departmental negotiators.

Vertical line denotes change.

- (a) Review initial proposals from exclusive representatives and management.
 - (b) Advise negotiators on current FLRA decisions and Departmental policy before the commencement of negotiations.
 - (c) Interpret DOE personnel policies; coordinate policy interpretations and requests for exceptions with other DOE organizations during negotiations.
- (4) Review and approve negotiated agreements, renegotiations, supplements, and side agreements for conformance with law, rule, or regulation under 5 U.S.C. 7114(c). This section states that an agreement shall be approved within 30 days if it meets statutory requirements.
- (5) Coordinate with the General Counsel on the legal issues related to all actions referenced in paragraph 5c(2) (a).
- (6) Assure the adequacy of Departmentwide labor-management relations training for management negotiators, labor relations specialists, personnel specialists, and supervisors.
- (7) Communicate with national labor organizations.
- (a) Act as the sole representative of DOE with national headquarters of labor organizations representing DOE bargaining unit employees.
 - (b) Negotiate multi-unit or national agreements, as appropriate, for units that cross organizational or geographical lines. Engage in impasse procedures under 5 CFR, parts 2470 and 2471, as required.
- d. Heads of Field Elements or Their Designees shall act as collective bargaining officials for their organizations. They shall:
- (1) Administer the labor-management relations program within the organizations under their direction in keeping with 5 U.S.C., chapter 71, regulations, decisions of outside authorities, **and** this Order.
 - (2) Participate in the representation of their organizations before the **FLRA, FSIP, FMCS**, and arbitrators.
 - (3) Bring to the attention of the Office of Personnel:
 - (a) Any matters relating to the Director of Personnel responsibilities in paragraph 5c(2).

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3710.1A

9-30-86

SUBJECT: LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES

-
1. PURPOSE. To set forth general policies, responsibilities, and requirements, and outline procedures for administration of the Federal Employee Labor-Management Relations Program under Title 5, United States Code (U.S.C.), chapter 71, and under Executive Order 11491, as amended, where applicable.
 2. CANCELLATION. DOE 3710.1, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 1-16-81.
 3. EXCEPTIONS. The provisions of this Order do not apply to:
 - a. The Office of the Inspector General.
 - b. The Office of the Assistant Secretary for Defense Programs, the Albuquerque, Nevada, and Savannah River Operations Offices and any organization, under 5 U.S.C. 7103(b)(1), having as a primary function intelligence, counterintelligence, investigative, or national security work, so that the provisions of 5 U.S.C., chapter 71, cannot be applied to the organization in a manner consistent with national security requirements and considerations.
 4. REFERENCES.
 - a. Public Law 95-454, the Civil Service Reform Act, Title 7, codified as 5 U.S.C., chapter 71, and 5 U.S.C. 5596(b), which provides the statutory framework for the Federal service labor-management relations program.
 - b. Executive Order 11491, as amended, "Labor-Management Relations in the Federal Service," where applicable, which assigned responsibilities and authorities to the executive branch of the Federal Government prior to the passage of the Civil Service Reform Act. Provisions of Executive Order 11491, as amended, were carried over under 5 U.S.C. 7135.
 - c. Executive Order 12171 of 11-19-78, amended by Executive Order 12338 of 1-11-82, which exempts certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program.
 - d. Title 5, Code of Federal Regulations (CFR), parts 2400 through 2430, the regulations of the Federal Labor Relations Authority (FLRA), which prescribe the procedural requirements for resolving unfair labor practice

complaints, negotiability appeals, and representation issues. The FLRA establishes labor-management relations and is generally responsible for carrying out the purposes of 5 U.S.C., chapter 71.

- e. Title 5, CFR, parts 2470 and 2471, the regulations of the Federal Service Impasses Panel (FSIP), which prescribe the procedural requirements for bringing negotiations impasses before FSIP.
- f. Title 29, CFR, parts 1400 through 1499, the regulations of the Federal Mediation and Conciliation Service (FMCS), which prescribe the procedural requirements for obtaining FMCS assistance in mediating bargaining disputes.
- g. Title 29, CFR, part 1613, the regulations of the Equal Employment Opportunity Commission, which prescribe procedures for processing discrimination complaints.
- h. Federal Personnel Manual (FPM), chapter 711, which contains guidance from the Office of Personnel Management (OPM) on agency labor relations programs.
- i. FPM supplement 296-33, subchapter 4, Figure 4-3, which contains instructions on assigning bargaining unit status codes.
- j. Any applicable approved negotiated agreement with an exclusive representative.

5. RESPONSIBILITIES AND AUTHORITIES.

- a. Director of Administration (MA-2) shall:
 - (1) Monitor the Federal Employee Labor Relations Program within the Department of Energy (DOE) and issue appropriate policies, rules, and regulations.
 - (2) Accord national consultation rights to labor organizations that qualify under 5 U.S.C. 7113 and implementing regulations.
 - (3) Disapprove initial, or withdraw continued, recognition of labor organizations in accordance with 5 CFR, part 2422.
- b. Deputy Director of Administration (MA-2.1) shall act as the collective bargaining official for Headquarters, exercising the authority in paragraph 5d.
- c. Director of Personnel (MA-20) shall:
 - (1) Manage, direct, and exercise overall policy guidance over DOE's labor-management relations program.

(2) Represent DOE before Federal agencies.

- (a) In coordination with the General Counsel, act as the primary representative before the FLRA for the following:
 - 1 Requests for major policy decisions or clarifications of present policy, under 5 CFR, Part 2427, "General Statements of Policy or Guidance";
 - 2 Responses to negotiability appeals filed by labor organizations under 5 CFR, Part 2424, "Expedited Review of Negotiability Issues";
 - 3 Exceptions to arbitrators' awards under 5 CFR, Part 2425, "Review of Arbitration Awards";
 - 4 Exceptions to decisions of FLRA regional directors under 5 CFR, Part 2422, "Representation Proceedings," and 5 CFR, Part 2423, "Unfair Labor Practice Proceedings";
 - 5 Exceptions to decisions of FLRA Administrative Law Judges under 5 CFR, Part 2423, "Unfair Labor Practice Proceedings"; and
 - 6 Responses to petitions for consolidation of bargaining units under 5 CFR, Part 2422, "Representation Proceedings."
 - (b) Concur with requests to file unfair labor practice charges with the FLRA against labor organizations under 5 CFR, Part 2423, "Unfair Labor Practice Proceedings."
 - (c) Present questions to the Department of Labor regarding standards of conduct for labor organizations under 5 U.S.C. 7120.
 - (d) Submit requests or information to OPM for the following:
 - 1 Petitions for judicial review of arbitrators' awards under 5 U.S.C. 4303 or 5 U.S.C. 7312;
 - 2 Labor-management relations guidance; and
 - 3 Reports on official time and bargaining unit composition.
 - (e) In conjunction with the Office of the Controller, process requests to the Comptroller General of the United States regarding negotiated wages and other pay matters.
- (3) Provide direction on DOE requirements, recommendations, and guidance, as appropriate, to Departmental negotiators.

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- (a) Review initial proposals from exclusive representatives and management.
- (b) Advise negotiators on current FLRA decisions and Departmental policy before the commencement of negotiations.
- (c) Interpret DOE personnel policies; coordinate policy interpretations and requests for exceptions with other DOE organizations during negotiations.
- (4) Review and approve negotiated agreements, renegotiations, supplements, and side agreements for conformance with law, rule, or regulation under 5 U.S.C. 7114(c). This section states that an agreement shall be approved within 30 days if it meets statutory requirements.
- (5) Coordinate with the General Counsel on the legal issues related to all actions referenced in paragraph 5c(2)(a).
- (6) Assure the adequacy of Departmentwide labor-management relations training for management negotiators, labor relations specialists, personnel specialists, and supervisors.
- (7) Communicate with national labor organizations.
 - (a) Act as the sole representative of DOE with national headquarters of labor organizations representing DOE bargaining unit employees.
 - (b) Negotiate multi-unit or national agreements, as appropriate, for units that cross organizational or geographical lines. Engage in impasse procedures under 5 CFR, parts 2470 and 2471, as required.
- d. Heads of Field Organizations or Their Designees shall act as collective bargaining officials for their organizations. They shall:
 - (1) Administer the labor-management relations program within the organizations under their direction in keeping with 5 U.S.C., chapter 71, regulations, decisions of outside authorities, and this Order.
 - (2) Participate in the representation of their organizations before the FLRA, FSIP, FMCS, and arbitrators.
 - (3) Bring to the attention of the Office of Personnel :
 - (a) Any matters relating to the Director of Personnel responsibilities in paragraph 5c(2).

(b) Labor-management relations reports required by this Order, OPM, and other Federal agencies.

- (4) Ensure that employees under their supervision are apprised of their rights under 5 U.S.C. 7114(a)(2)(B) and under appropriate negotiated agreements.
- (5) Keep the Office of Personnel advised of significant problems and the progress of the program through submission of an annual report or oral reports, as required.

e. General Counsel (GC-1) shall:

- (1) Provide legal advice to the Director of Personnel and to field legal staff members on questions concerning the interpretation of laws, rules, or regulations bearing on the labor-management relations program.
- (2) In coordination with Director of Personnel, represent or participate in the preparation for and representation of the DOE at hearings before the FLRA, FSIP, FMCS, or Administrative Law Judges. (See page 3, paragraph 5c(2) (a).)
- (3) Review all requests for payment of attorney's fees for conformance with applicable laws and regulations.

f. Managers and Supervisors shall:

- (1) Represent, express, and support the management viewpoint in the administration of DOE policy and in communication with employees and labor organization representatives.
- (2) Promptly inform the local labor relations or personnel officer of significant problems affecting the labor-management relations program.
- (3) Meet with labor organization representatives as required by statute or appropriate agreements after consultation with the local labor relations or personnel officer.
- (4) Represent DOE at agreement negotiations, as required. Maintain records on costs of management's and the exclusive representative's proposals so that the proposals can be analyzed in terms of their effects on the efficiency of DOE.
- (5) Maintain records on official time used by exclusive representatives under the statute, regulations, or terms of negotiated agreements.

g. Labor Relations and Personnel Officers shall:

- (1) Act as the principal advisors to management on labor relations matters, including representational issues, negotiations, agreement administration, and the impact of appropriate third-party decisions on the local labor-management relations program.
- (2) Ensure that managers and supervisors are properly trained to carry out their labor-management relations responsibilities.
- (3) Maintain statistics on bargaining unit membership, official time, and negotiations, as required by OPM or DOE.

BY ORDER OF THE SECRETARY OF ENERGY:



HARRY L. PEEBLES
Director of Administration

9-30-86

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CHAPTER I

GENERAL PROVISIONS

1. MANAGEMENT RESPONSIBILITIES. When dealing with labor organizations acting as exclusive representatives of bargaining unit employees, management must deal with those organizations fairly and in good faith. Management must also be cognizant of its duty to present and fully articulate the position of the Federal Government and the Department and its organizations. When dealing with individual bargaining unit employees, management must ensure that the employees are free to exercise their rights under 5 U.S.C., chapter 71; that is, the right to form, join, or assist any labor organization, or to refrain" from any such activity, the right to act for a labor organization in the capacity of a representative, and the right to engage in collective bargaining.
2. MANAGEMENT RIGHTS AND BARGAINING OBLIGATIONS.
 - a. The statute lists those rights which management alone may exercise. (See 5 U.S.C. 7106(a).) Those rights include the right to:
 - (1) Determine the mission, budget, organization, number of employees, and internal security practices; in accordance with laws, to hire, assign, direct, layoff, retain, suspend, remove, reduce in grade or pay, or take other disciplinary action against employees;
 - (2) Assign work and make contracting-out determinations; and
 - (3) Select for appointments from among properly ranked and certified candidates or from any other appropriate source.
 - b. When implementing these rights, management may change conditions of employment, that is, personnel policies, practices, and matters affecting working conditions as defined in 5 U.S.C. 7103(a)(14). When management anticipates that it will be making more than minimal changes to conditions of employment (in case law referred to as a de minimis change), management must notify the exclusive representative and afford the representative an opportunity to present proposals on:
 - (1) Procedures management will use when implementing decisions; and
 - (2) Appropriate arrangements for adversely affected employees.
 - c. The notification of the change should be specific and provide clear, unqualified information about planned management actions including the implementation date. See Chapter III for procedures related to negotiating on proposals. If the exclusive representative fails to respond to management's notification by the implementation date or otherwise indicates that no proposals will be forthcoming, management may proceed to implement.

3. FORMAL DISCUSSIONS.

- a. Section 7114(a)(2)(A) of 5 U.S.C. states management's obligation, when holding a formal discussion, to afford the exclusive representative an opportunity to attend. The exclusive representative has the right to attend a formal discussion between one or more agency representatives and one or more employees or representatives concerning grievances, personnel policy, or other general conditions of employment. The following questions should be used as guidelines for determining management's obligations:
 - (1) Is the meeting or discussion "formal" in nature?
 - (2) Is attendance mandatory?
 - (3) Is there a proposed agenda?
 - (4) Will attendees include high-level managers?
 - (5) What is the topic of the meeting?
- b. All of these criteria need not be met to trigger a management obligation; one or more of these factors could outweigh the absence of others.
- c. If the exclusive representative's designee or steward is given notice of a formal discussion because of his or her duties as an employee, then no further notice need be given to the exclusive representative.
- d. During formal discussions, participation rights afforded to the exclusive representative shall be no greater than participation rights afforded to bargaining unit employees.

4. INVESTIGATORY EXAMINATIONS.

- a. If a management official or someone representing DOE management questions a bargaining unit employee under conditions described in 5 U.S.C. 7114(a)(2)(B), that is, the employee reasonably believes that examination may result in disciplinary action against the employee, and the employee requests the presence of a representative, management shall allow a reasonable amount of time to secure a representative. However, investigatory examinations will not be unduly delayed for the sole purpose of obtaining a representative.
- b. Annually, on 10-1, unless otherwise provided for in negotiated agreements, collective bargaining officials will post the announcement in Attachment I-1 to inform employees of their rights under 5 U.S.C. 7114(a)(2)(B). The announcement will be posted for 30 days; if preferred, Attachment I-1 may be posted permanently.

5. DUES WITHHOLDING.

- a. Under the provisions of 5 U.S.C. 7115, collective bargaining officials shall, upon request of the appropriate labor organization, deduct the organization's dues from the pay of bargaining unit employees who submit a voluntary allotment on Standard Form (SF) 1187, "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues." Procedures for submitting requests for deductions, for withdrawing such requests, and for modifying dues withholding amounts will be negotiated with the labor organization and incorporated in term agreements. (See Chapter III.)
- b. When an employee becomes ineligible for dues withholding because, through a specific personnel action, he or she is no longer in the bargaining unit, the responsible payroll or personnel office will terminate the employee's dues withholding. (See paragraph 7 below.) The SF-50, "Notification of Personnel Action," will include the statement: This action terminates eligibility for labor organization allotment.

6. OFFICIAL TIME.

- a. Although the exclusive representative may negotiate for additional official time associated with administering a labor-management agreement (see Chapter III, "Negotiations and Agreements," and Chapter IV, "Agreement Administration"), representatives of labor organizations have statutory entitlement to official time under the following conditions:
 - (1) Negotiating a collective bargaining (term or mid-term) agreement. The number of employees for whom official time is authorized under the statute shall not exceed those designated by collective bargaining officials to represent the DOE. (See 5 U.S.C. 7131 (a).)
 - (2) Participating in impasse proceedings under 5 U.S. C. 7131 (a) and 5 CFR, parts 2470 and 2471.
 - (3) Participating in proceedings before the FLRA under 5 U.S. C. 7131 (c) and 5 CFR 2429.13. Those proceedings include investigations of unfair labor practice charges, representation hearings, and representation elections (see Chapter II, "Election Issues"). For purposes of this subparagraph only, the DOE will pay the requisite travel expenses and per diem associated with the use of this official time.
- b. The OPM requires agencies to track and record the use of official time by the exclusive representative and others engaged in a variety of representational activities while on duty time. The local labor relations or personnel officer will compile the time in accordance with the requirements of FPM letter 711-161 (see Attachment I-2) and submit the information to the Office of Personnel by 11-1 of each year.

7. CONFLICT OF INTEREST. No employee shall carry on any activities as an officer or representative of a labor organization that will conflict with the proper exercise of, or be incompatible with, his or her official duties or responsibilities. In the event such a conflict or incompatibility arises, the individual concerned shall be given a reasonable opportunity to correct the condition causing such conflict or incompatibility. If the individual does not voluntarily correct the situation, management shall direct reassignment or another personnel action which will end the conflict or incompatibility.
8. BARGAINING UNIT STATUS.
 - a. The local labor relations or personnel officer will continually monitor the composition of his or her respective bargaining units to ensure that the employees in the unit meet the statutory criteria for inclusion. See 5 U.S.C. 7103(a)(2) and 7112(b). If an employee or group of employees becomes ineligible for bargaining unit status, the servicing personnel officer will notify the labor relations officer and the affected employee(s) and will terminate any dues allotments.
 - b. Each encumbered position in the DOE has been assigned a bargaining unit status code. The codes, which are maintained in the DOE payroll/personnel system, indicate whether the employee in the position is:
 - (1) Not eligible for representation by an exclusive representative because the employee is covered by the provisions of 5 U.S.C. 7103(a)(2) or 7112(b) (code 8888);
 - (2) Eligible for representation but unrepresented (code 7777); or
 - (3) Represented by an exclusive representative. The code assigned may be a combination of letters and numbers which cues system users to the composition of the bargaining unit.
 - c. Local labor relations officials or personnel officers will monitor the assignment of bargaining unit status codes within their areas of responsibility. They will forward bargaining unit status code information to the Director of Personnel when required for reports to OPM.
9. LABOR-MANAGEMENT RELATIONS REPORTS. Collective bargaining officials shall submit a Labor-Management Relations Report to the Office of Personnel by 11-1 of each year. Negative reports are required. See the reporting requirements in Attachment I-3. The Office of Personnel will compile a DOE summary.

10. UNFAIR LABOR PRACTICE CHARGES.

- a. Regardless of the care with which the local labor-management relations program has been conducted, there may be occasions when labor organizations file unfair labor practices charges against DOE organizations. The local labor relations or personnel officer shall ascertain the facts surrounding the charge as soon as the charge is received. All parties shall cooperate with FLRA investigators; they shall allow bargaining unit employees official time to participate in the investigation if requested by the FLRA. Managers and supervisors are entitled to representation when being interviewed by FLRA investigators. They shall not sign any statement summarizing these interviews with FLRA investigators without the approval of their representatives and without being certain that DOE views have been presented accurately. The FLRA will not penalize anyone for refusing to sign statements.
- b. When collective bargaining officials believe that the exclusive representative has committed a violation of the statute, they will request approval to file an unfair labor practice charge against the exclusive representative. The Director of Personnel must concur with all such requests. Requests for approval will include a sample copy of FLRA 23, "Charges Against Labor Organization or Its Agents," and a full description of the event(s) leading to the recommended unfair labor practice charge.

NOTICE TO BARGAINING UNIT EMPLOYEES

Title 5, U.S.C., chapter 71, gives employees in a bargaining unit represented by an exclusive representative the right, under limited circumstances, to have a representative present at a meeting involving an examination by a representative of management in connection with an investigation. Title 5, U.S.C. 7114(a)(2)(B) states:

"(a)(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at

* * * * *

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation."

Therefore, as also required by 5 U.S.C. 7114(a)(3), you are hereby given notice of the right set forth in this provision.

OFFICIAL TIME USED BY EXCLUSIVE REPRESENTATIVES AND PERSONAL REPRESENTATIVES

<u>Type of Activity</u>	<u>Number of Hours</u>	<u>Travel and Per Diem Costs</u>
1. <u>Labor Relations Activities</u>		
a. Negotiating a basic agreement.		N/A
b. Negotiating mid-term agreements.		N/A
c. Resolving impasses before the Federal Service Impasses Panel.		N/A
d. Consulting with management (including committee meetings, formal meetings and investigatory interviews).		
e. Grievances - Union or Management.		
f. Arbitration - Union or Management.		
g. Grievances - Employee. (1) Representing grievant. (2) Being represented.		
h. Arbitration - Employee. (1) Representing grievant. (2) Being represented.		
i. Representing an employee or a union or serving as a witness during the investigation or hearing of cases before the Federal Labor Relations Authority.		
j. Representing a labor organization during an inspection conducted by the Occupational Safety and Health Administration.		

<u>Type of Activity</u>	<u>Number of Hours</u>	<u>Travel and Per Diem Costs</u>
k. Receiving training as a steward or other union representative to the extent that a labor agreement allows such use of official time.		
2. <u>Processing Grievances Under the Agency Grievance Procedure</u>		
a. Representing grievants.		
b. Being represented.		
3. <u>Statutory Appeals, Except for Equal Employment Opportunity Complaints.</u> (Please list each appeal separately and specify the type of appeal.)		
a. Representing grievants.		
b. Being represented.		
4. <u>Equal Employment Opportunity Complaints</u>		
a. Representing complainants.		
b. Being represented,		
c. Serving as witness called by the employee.		
(1) In a case before a complaints examiner.		
(2) In a case before the Equal Employment Opportunity Commission.		

DEPARTMENT OF ENERGY
STATISTICAL SUMMARY OF LABOR-MANAGEMENT RELATIONS ACTIVITIESOrganization NE Power AdministrationPeriod Ending: September 19 87

1. Labor Organizations with Exclusive Recognition	Date Recognized	Employees in Unit				Unit Description	Initial Agreement Date	Current Agreement Expiration Date
		Total	WG	Other Prof	GS			
ABC Union	6/30/80	400	400			Const. Wkrs.	9/30/80	9/30/87
XYZ Union	10/15/76	200		50	150	Office Prof.	1/1/77	2/15/87
<hr/>								
2. (a) Major Labor-Management Relations Problems for the Year						None		
(b) Prognosis of Labor-Management Relations for the Coming Year.						(See Attached)		
(c) Recommendations for Changes in Management Policy.						(See Attached)		

3. Summary of Costs	Amount of Time	Per Diem	Total Cost
(a) Negotiations	100	\$1,000	\$3,000
(b) Consultations	10		200
(c) Dispute Resolution	50	250	1,250
(d) Union Representation			
(1) Meetings with Management	50		500
(2) Grievance/Arbitration	20	250	450
(3) Other (specify)			

CHAPTER II

ELECTIONS

1. ORGANIZING ACTIVITIES. Title 5, U.S.C., section 7102 guarantees an employee's right to form a labor organization which, presumably, could become the exclusive representative of bargaining unit employees. Management may not interfere with that right. However, employee efforts to form a labor organization do not convey any further rights until a sufficient showing of interest in labor organization representation has been submitted to the FLRA. (See paragraph 2 below.) Therefore, requests for information on potential bargaining unit members will not be treated like requests submitted under 5 U.S.C. 7114(b)(4) but, rather, like requests from the public. Requests for access to Government facilities will be treated similarly. Activities such as literature distribution or informational picketing conducted outside Government facilities will be allowed if such activities conform to local law; however, no organizing activities will be allowed to disrupt agency mission or Federal employees' duties.
2. REPRESENTATION PETITION.
 - a. Title 5 of CFR, part 2422, describes procedural requirements for the representation election process. The formal process begins when a labor organization, seeking to become the exclusive representative of an agency's bargaining unit employees, files a representation petition with the FLRA. The local labor relations or personnel officer will examine the petition, which must, by regulation, be served on the agency, to ascertain:
 - (1) Timeliness. A representation petition cannot be considered timely if there has been an election in the bargaining unit within the last 12 months in which no labor organization was certified by the FLRA as the exclusive representative or if a labor organization has been certified within the last 12 months but has no written term agreement with the agency. Finally, if there is a term agreement effective for 3 years or less between the exclusive representative and management, a representation petition may be timely filed only during a window period (60-105 days) before or at any time after the expiration of the agreement. (See 5 CFR 2422.3.)
 - (2) A Sufficient Showing of Interest. The representation petition filed with the FLRA must be accompanied by a list of signatures of employees who have expressed interest in an election; the list must consist of at least 30 percent of the bargaining unit. Under FLRA regulation, management will not be given access to the list of signatures. Therefore, if the local labor relations or personnel officer believes that there is not a sufficient showing of interest, an independent investigation should be conducted. Due to the sensitivity of such an investigation, the Director of Personnel should be consulted before beginning. (See 5 CFR 2422.2.)

(3) Appropriateness of the Bargaining Unit. The bargaining unit described in the representation petition must ensure a clear and identifiable community of interest among bargaining unit employees, and it must promote effective dealings between the exclusive representative and management and the efficiency of agency operations. Further, the unit described in the petition must reflect all statutory exclusions under 5 U.S.C. 7112; that is, managers, supervisors, confidential employees, personnelists, and employees engaged in labor relations, investigative, or national security work must be excluded. The local labor relations or personnel officer should begin immediately to assemble appropriate documentation reflecting improper configuration of or inclusions in the bargaining unit.

- b. After receipt of the representation petition, the FLRA will post a notice of proposed election at work site(s). If the petition is deficient in any element listed above, response shall be filed with the FLRA, challenging the validity of the petition, within 10 days of the posting of the proposed election notice. A copy of the response shall be forwarded to the Office of Personnel.

3. EQUAL ACCESS.

- a. A labor organization challenging an incumbent exclusive representative pursuant to a validly filed election petition, as determined by the FLRA, is entitled to be accorded a status equivalent to the exclusive representative's for matters related to the determination of the exclusive representative. These matters differ from those which have been bargained for or which would accrue to the exclusive representative under 5 U.S.C., chapter 71, such as the right to attend formal meetings. Equivalent status will remain in effect until final disposition of the representation process, including any challenges to the representation election and resolution of those challenges.
- b. As soon as the FLRA has accorded a challenging labor organization equivalent status, the local labor relations or personnel officer will notify each organization, in writing, of the specific DOE services or facilities each organization may use during the representation campaign. These services or facilities may include:
 - (1) Use of a public area for distributing literature during non-duty time; and
 - (2) Use of employee bulletin boards (rather than use of management bulletin boards previously negotiated by the exclusive representative) .

4. MAINTAINING CONDITIONS OF EMPLOYMENT. The FLRA has ruled that employers must maintain, to the maximum extent possible, conditions of employment during a representational campaign. This rule preserves the equivalent status of the challenging labor organization with that of the exclusive representative, which would bargain with management on changes in conditions of employment. Changes involving management rights under 5 U.S.C. 7106(a) or (b)(1), which, respectively, management cannot or need not negotiate, are allowed. However, to preserve the equivalent status of the two competing organizations, management shall change conditions of employment as little as possible during a representational campaign and during any subsequent challenges to election results.
5. MANAGEMENT NEUTRALITY.
 - a. DOE managers and supervisors may, under ordinary circumstances, express personal views about labor organizations or collective bargaining if such expressions are not made under conditions that are coercive to the employee. However, they must remain neutral during representation campaigns. In addition, DOE managers and supervisors may:
 - (1) Publicize an election and encourage bargaining unit employees to vote;
 - (2) Correct the record regarding any false or misleading statement made by any person; or
 - (3) Inform employees of the Federal Government policy regarding labor-management relations.
 - b. Before any representation election campaign begins, the local labor relations or personnel officer will notify local managers of their rights and obligations during the campaign.

CHAPTER 111

NEGOTIATIONS AND AGREEMENTS

1. COLLECTIVE BARGAINING AGREEMENTS. When a labor organization has been accorded exclusive recognition, management and the labor organization may negotiate, and reduce to writing if requested, agreements on conditions of employment of bargaining unit employees. The agreements may be basic or term agreements, covering general procedures or continuing practices, or the agreements may be limited ones, negotiated in response to a change in conditions of employment initiated by management. Regardless of the nature of the agreement, the same limitations and review procedures will apply; preparations, described in paragraph 2, below, will be similar.
2. PLANNING FOR NEGOTIATIONS. Effective collective bargaining requires prior planning. As soon as management decides to initiate negotiations or learns that the exclusive representative wishes to negotiate, it should proceed with the following preparations:
 - I a. Establishing Bargaining Parameters. Management at all affected levels should thoroughly discuss its needs, the exclusive representative's actual or anticipated proposals, the appropriate means of protecting management's rights, and the organization's mission. As soon as bargaining is initiated by either party, or earlier if negotiations are likely, the local labor relations or personnel officer will contact the Office of Personnel and discuss Departmentwide policies that may affect bargaining.
 - b. Assembling the Bargaining Team. Representatives of line and staff management should be on the bargaining team. All members of the team should receive training, or have experience, in labor-management negotiations. In order to have technical advice readily available during negotiations, a person qualified in personnel management and labor relations policies and procedures shall be a member or technical advisor of all management negotiating teams. Participation in negotiations can be a full-time job. Officials responsible for naming bargaining team members shall ensure that the team members can be spared from their regular duties.
 - c. Keeping Records.
 - (1) The local labor relations or personnel officer shall establish a procedure for establishing the costs of all proposals exchanged during negotiations. This will assist negotiators in assessing the relative worth of various proposals and in preparing a case if impasse procedures are required. The salary costs of time spent by management and exclusive representatives during bargaining shall also be recorded.

- (2) Title 5, U.S.C. 7131 (a) entitles the exclusive representative to official time for negotiating collective bargaining agreements and for participating in impasse proceedings. The local labor relations or personnel officer shall request a list of bargaining team members from the exclusive representative in sufficient time to notify the bargaining team members' supervisors. Further, a record of all official time spent by exclusive representative bargaining team members shall be maintained in accordance with FPM letter 711-161.
- (3) The local labor relations or personnel officer shall establish a procedure for taking notes during bargaining and for maintaining a bargaining history. Information gathered through this process will be valuable during impasse procedures, if required, and during agreement administration.

3. ACCESS TO INFORMATION.

- a. Exclusive Representative's Right to Information. Labor organizations that are exclusive representatives for bargaining unit employees have a special right to information pursuant to 5 U.S.C. 7114(h)(4). Requests for information associated with bargaining proposals or the negotiated grievance procedure will be reviewed by the local labor relations or personnel officer for statutory conformance. If the request for information cannot be honored, he or she will contact the exclusive representative immediately and respond in writing, if necessary.
- b. Limiting Access. Although 5 U.S.C. 7114(b)(4) allows the exclusive representative access to information pursuant to its collective bargaining activities, specifically excluded from this provision is intra-management guidance, advice, counsel, or training related to collective bargaining. Accordingly, pre-bargaining planning or training material will display the following wording: "This document constitutes intra-management communications covering subjects directly related to collective bargaining. Under terms of 5 U.S.C. 7114(b)(4), its contents must not be disclosed to bargaining unit employees or their representatives."

4. SCOPE OF NEGOTIATIONS. Title 5, U.S.C. 7117 requires the agency and the exclusive representative to bargain in good faith with respect to personnel policies, practices, and matters affecting working conditions of bargaining unit employees. However, the statute does not require reaching agreement. The following conditions apply to this requirement.

a. Subjects Prohibited from Negotiations.

- (1) Management Rights. These rights are reserved solely for management under 5 U.S.C. 7106(a). (See Chapter I, paragraph 2a.) The language of 5 U.S.C. 7106(a) shall be incorporated in all term agreements; this will serve as notification to all parties of management's statutory rights.

- (2) Laws. No provision which is inconsistent with any law shall be negotiated. If the provisions of a law convey a right, the statutory language may be included in an agreement as a restatement of a legal requirement. Laws passed during the term of an agreement supersede any portion of an agreement in conflict with the law.
 - (3) Governmentwide Regulations. These have the same effect as laws. Examples of Governmentwide regulations include title 5 CFR; the Federal Personnel Manual; Comptroller General Decisions; Office of Management and Budget Regulations and Circulars; and General Services Administration Regulations. Unless otherwise negotiated, if these regulations are issued during the term of an agreement, the agreement will govern; at the expiration of the agreement, all new regulations will apply and subsequent agreements will be brought into conformance with them.
 - (4) Non-Discretionary DOE Orders. This category includes provisions of published DOE orders that afford local management no discretion. (See paragraph 3c below.)
 - (5) Executive Orders.
- b. Subjects Negotiated at the Election of the Agency. Title 5, U.S.C. 7106(b)(1) allows the agency, at its election, to negotiate on the numbers, types, and grades of employees assigned to a unit, project, or tour of duty, and on the technology, methods, and means of performing work. These are permissive as opposed to prohibited or mandatory topics. Other topics considered permissive are those that are not strictly conditions of employment of bargaining unit employees, yet not prohibited, and may be negotiated for the sake of clarity in workplace procedures or because they are of great interest to bargaining unit employees. Collective bargaining officials shall obtain advance approval from the DOE office of primary interest prior to negotiating on any permissive subject. The collective bargaining officials shall forward requests to the Office of Personnel, which will obtain approvals from the appropriate offices. However, management should carefully weigh its options before negotiating on permissive subjects. Management should not negotiate on permissive subjects unless the benefits to efficiency of operations far outweigh any resulting limitation on management flexibility.
 - c. Exceptions to DOE Policies and Regulations. When exclusive representatives' proposals appear to conflict with published Departmentwide policies and regulations, collective bargaining officials must obtain an exception to the policies or regulations or declare the proposals nonnegotiable based on compelling need. The FLRA has authority to determine whether a compelling need for Departmentwide regulations exists. (See 5 U.S.C. 7105(a)(2)(D) and 7117(b).) The FLRA's regulations in 5 CFR 2424.11 establish the criteria for compelling need the policies

or regulations are essential to the agency's mission; they are necessary for the maintenance of merit principles; or they implement, in a nondiscretionary manner, a mandate under law or other outside authority. If management's negotiators anticipate the need for exceptions to DOE's policies or regulations, they shall forward a request for exceptions to the Office of Personnel. The Office of Personnel will coordinate the request with the DOE organization responsible for issuing the policies or regulations. The request must specify the policies or regulations in question and must compare the policies or regulations with the compelling need criteria in 5 CFR 2424.11.

- d. Management Proposals. Management proposals for term agreements shall contain mandatory provisions listed in Attachment III-1. (See paragraph 5, below.)

5. DISPUTE RESOLUTION.

- a. Impasses. If management's negotiators and the exclusive representative are unable to reach agreement during negotiations, the procedures outlined in the regulations of the FMCS, 29 CFR, parts 1404 and 1425, and the regulations of the FSIP, 5 CFR, parts 2470 and 2471, will be followed. Procedures for impasse resolution should be included in the ground rules for negotiating term agreements; term agreements should include provisions for dealing with impasse resolution during mid-term negotiations.
- b. Negotiability Disputes. Guidelines for determining the negotiability of an exclusive representative's proposals are in 5 U.S.C. 7106(a), 7117(a) and (b), 5 CFR 2424.11 (describing compelling need), and applicable case law. If requested by the exclusive representative, local management will provide to the exclusive representative a written statement alleging the nonnegotiability of the exclusive representative's proposals. A copy of the allegation will be sent to the Office of Personnel. If the exclusive representative files a petition for a review of negotiability issues with the FLRA under 5 CFR, part 2424, upon receipt of FLRA's acknowledgement of the petition or upon receipt of a copy of the petition, the local labor relations or personnel officer will notify the Office of Personnel immediately. The Office of Personnel, on behalf of local management, will respond to petitions for review of negotiability issues.

6. REVIEW AND APPROVAL. The Director of Personnel shall review and approve or disapprove negotiated agreements, renegotiations, supplements, and side agreements for conformance with law, rule, or regulation under 5 U.S.C. 7114(c). An agreement shall be approved within 30 days if the agreement meets statutory requirements. The following procedures will be used:

- a. Submitting Agreements. Three copies of each negotiated agreement shall be submitted to the Director of Personnel for review and approval within 5 days of signing. An advance copy should be submitted to the Office of Personnel to permit the review to proceed expeditiously.

- b. Form of Review. Both the submitting organizations and the Director of Personnel will use the review checklist in Attachment III-1 in the review process.
- c. Approval. A negotiated agreement that meets the requirements in 5 U.S.C. 7114(c)(1), that is, the agreement is not in violation of any laws or governmentwide regulations, will be approved within 30 days of the date of its execution. Upon approval, the Director of Personnel will return two signed copies to the local labor relations or personnel officer as notification of approval; the local labor relations or personnel officer will give one copy to the exclusive representative.
- d. Disapproval. A negotiated agreement that, in whole or in part, does not meet the requirements outlined in 5 U.S.C. 7114(c)(1) will be returned within 30 days of the date of execution with written identification of the part(s) disapproved and reasons for disapproval. The local labor relations or personnel officer will notify the exclusive representative of the disapproval immediately upon receipt. If, because of workload emergencies, the 30-day approval time may expire before the collective bargaining officials can be notified in writing, the Director of Personnel will notify the local labor relations or personnel officer orally and will contact the exclusive representative directly, if necessary.

AGREEMENT REVIEW CHECKLIST

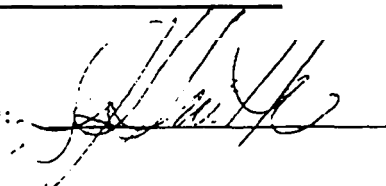
1. Agreement Between: NE Power Administration/ABC Union
2. Date Received: 9/30/80
3. Mandatory Provisions: _____
Does agreement contain a:
 - a. Statement identifying parties and a statement that the agreement only applies to employees and positions in the bargaining unit? yes
 - b. Description of the specific unit to which the agreement applies?
Construction Workers/ Other Blue Collar
 - c. Statement incorporating provisions of following sections of 5 U.S.C., chapter 71:
 - (1) 5 U.S.C. 7102 Yes
 - 5 U.S.C. 7106(b) Yes
 - (2) The language of 5 U.S.C. 7106(a). yes
 - d. Statement specifying the effective date and duration of the agreement? 9/30/80 - 9/30/83
 - e. Grievance procedure meeting the following requirements?
 - (1) Is fair and simple. yes
 - (2) Contains clear statement of scope. Yes - Includes management grievances against union
 - (3) Provides for expeditious processing. Yes
 - (4) Specifically lists those issues which are excluded by law from negotiated grievance procedures. Yes - No EEO grievances
 - (5) Provides that any grievance not satisfactorily settled under the negotiated grievance procedure is subject to arbitration. Yes - Panel to be chosen
 - (6) Provides that an exclusive representative has a right in its own behalf or on behalf of any employee. In the unit to present and process grievances. Yes

- (7) States that it is the only procedure available to parties and employees for resolving covered grievances. (Note: Actions covered by 5 U.S.C. 7121(d) and (e), if not excluded, may be taken either through the grievance procedures or the statutory appeals procedure.) 7121 Items not excluded
- (8) Contains the employee's right to present a grievance and the right of the exclusive representative to be present. Yes
- (9) Statement that management or the exclusive representative are the only parties who may invoke arbitration. Yes
- (10) A statement that the parties have the right to file exceptions with the FLRA to the arbitration award for other than chapter 43 or 75 actions. Yes
- (11) Contains procedures for dealing with grievability on arbitrability during initial stages. Yes - But carried forward if in dispute
- f. Dues withholding procedure incorporating the following provisions:
- (1) That the provisions are subject to and will be governed by 5 U.S.C. 7115. Yes
- (2) That the filing of the ~~5 U.S.C. 7115~~ "Request and Authorization for Voluntary Allotment or Compensation for Payment of Employee Dues," shall be a voluntary action by the employee. Yes
- (3) A requirement for prompt notification to the employer by the ~~labor organization of an employee's notification of revocation of the allotment or ineligibility to continue an allotment.~~ Yes
- (4) The title and address of the labor organization official who is to receive the remittance and the remittance listing. Yes
- (5) The information to be provided in the remittance listing.
- (6) The frequency with which the labor organization may change the amount of the dues to be deducted for each allotter. One change per year

- (7) The procedures for adjustment of errors in the amount of the remittance. Yes
- (8) The effective dates for the beginning and cancellation of allotments. 3 Payperiods after receipt
- (9) Procedures for removing allottees who are no longer eligible for dues allotments. Yes
4. Has advance approval been obtained from the Office of Personnel on any negotiations concerning section 7106(b)(1) of the act?
Yes - Re: Technology Issues
5. Changes In agreement requiring correction: _____

6. Suggested changes: _____

7. 7. Name of Headquarters representative with whom discussed:
Joe Jones
8. 8. Date oral or written review approval or nonapproval given:
10/13/80

Signature: 

REMARKS:

CHAPTER IV

AGREEMENT ADMINISTRATION

1. SUPERVISORS' TRAINING. The success of a labor-management agreement depends largely on how the agreement is administered. Consistent and knowledgeable interpretation of the agreement will lessen confusion and the possibility of dissatisfaction and grievance. Accordingly, within 60 days of the approval of a negotiated agreement between local management and the exclusive representative, all affected managers and supervisors will receive training on the agreement. The training will cover such topics as new agreement provisions, management's interpretation of the provisions, implementation procedures, employee rights, and responding to employee grievances. Members of management's bargaining team will participate in the training, as appropriate. The training shall be confined to non-bargaining unit employees.
2. GRIEVANCES AND ARBITRATIONS.
 - a. Each supervisor will contact his or her local labor relations or personnel officer as soon as he or she receives a grievance. The grievance will be examined for procedural conformance with 5 U.S.C. 7121 and the negotiated agreement. The local labor relations or personnel officer will assist managers and supervisors with appropriate responses at each step of the grievance procedure, if necessary.
 - b. Each grievance will also be examined for issues of grievability or arbitrability. If a grievance raises a question of arbitrability (that is, it raises an issue on request for relief that, if granted, would conflict with law, rule, or regulation), the local labor relations or personnel officer will contact the Office of Personnel for advice and assistance in formulating a response. Although the issue of arbitrability is to be decided by the arbitrator under 5 U.S.C 7121(a)(1), it is not an unfair labor practice to refuse to process a grievance if the issue is clearly outside the authority of the arbitrator to adjudicate.
 - c. The exclusive representative has the right to information in order to pursue a grievance. (See 5 U.S. C. 7114((b)(4).) Chapter III, paragraph 3a, describes the procedure for responding to such requests.
 - d. If an arbitrator issues an award that local management believes is contrary to law or regulation, the local labor relations or personnel officer shall notify the Office of Personnel immediately and forward the appropriate documentation within 5 days of receipt of the award. The Office of Personnel, on behalf of local management, will file exceptions to arbitrators' awards with the FLRA under 5 CFR, part 2425. the FLRA is not authorized to review arbitrators' awards related to performance-based removals or demotions under 5 U.S.C. 4303 or adverse actions under

5 U.S.C. 7512. Only OPM may seek review of such awards from the U.S. Court of Appeals for the Federal Circuit. The Office of Personnel, on behalf of local management, will file requests with the OPM to seek judicial review of these types of arbitration awards.

3. ATTORNEY FEES. If an exclusive representative requests attorney fees in conjunction with an arbitration, the request and proposed response will be forwarded immediately to the Office of Personnel, which will direct the request to the Office of General Counsel for statutory and regulatory review. The General Counsel will concur in all responses to, requests for attorney fees. An award of attorney fees that is not in conformance with 5 U.S.C. 5596(b), or 5 U.S.C. 7701(g) will be a basis for DOE's filing exceptions to the award with the FLRA or for requesting judicial review by the OPM.
4. PICKETING OR DEMONSTRATIONS BY LABOR ORGANIZATIONS. Title 5, U.S.C. 7102 states the rights of employees to form, join, or assist labor organizations or to refrain from doing so. Further, 5 U.S.C. 7116(b) allows informational picketing that does not interfere with agency operations. Local management is expected to protect those rights. However, informational picketing or demonstrations by labor organizations, which may arise as a result of what is perceived to be an inadequately resolved grievance or complaint, are still subject to potential misunderstanding by the public. Accordingly, the local labor relations or personnel officer will notify the Office of Personnel immediately of such picketing or public demonstrations. The information will include the location, organizational element, subject of the picketing or demonstration, and other pertinent facts.

CHAPTER V

LABOR MANAGEMENT RELATIONS AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

1. CHOICE OF PROCEDURES.

- a. Pursuant to 5 U.S.C. 7121(d), the negotiated grievance procedure may extend to allegations of discrimination. However, employees must choose either the statutory discrimination complaint procedure (see 5 u.s.c. 2302(b)(1) and 29 CFR, Part 1613) or the negotiated grievance " procedure but not both. As soon as an employee files a formal, written complaint or grievance, he or she will be considered to have made a choice. Meeting with a counselor to discuss a possible grievance or complaint would not constitute a choice.
- b. Title 5 U.S.C. 7121(b)(3)(C) sets forth the right of the exclusive representative or the agency to invoke arbitration. When an allegation of discrimination is raised during the negotiated grievance procedure, the grievant has a right of appeal to the Equal Employment Opportunity (EEO) Commission either after arbitration or, if arbitration has not been invoked, at the end of the grievance procedure. See 29 CFR 1613.231(b).
- c. When an employee chooses the statutory discrimination complaint procedure, the employee may then choose his or her own personal representative. If the employee chooses a labor organization official as a personal representative, the representative's time will not count as official time for grievance purposes. (See Chapter 1.) The choice of the employee's representative is also subject to disapproval under the appropriate regulations.
- d. If the employee chooses the statutory discrimination complaint procedure, any meetings held between employee and management about the complaint are not formal meetings as defined by 5 U.S.C. 7114(a)(2)(A), and management may properly forbid the exclusive representative's attendance.

2. IMPLEMENTING A DISCRIMINATION COMPLAINT DECISION.

- a. Corrective or remedial actions ordered by the Merit Systems Protection Board (MSPB) or a DOE EEO officer are binding on the DOE. If application and implementation of a decision concerning a complaint of discrimination will have an impact on personnel policies, practices, or working conditions, management must notify the exclusive representative and afford the representative a reasonable opportunity to make appropriate proposals prior to the implementation of such changes.

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- b. If the remedial action ordered by the MSPB or the EEO officer includes meeting with an employee or employees regarding personnel policies, practices, or matters affecting working conditions, management will notify the exclusive representative and offer the representative an opportunity to attend the meeting.
3. AFFIRMATIVE ACTION PLANS. DOE management is required to maintain an affirmative action program to ensure equal employment opportunity. If the development of affirmative action plans involves changes in personnel policies, practices, or working conditions, management will notify the exclusive representative of the proposed changes and will afford the exclusive representative an opportunity to submit appropriate proposals regarding the plans prior to implementation.